

**State of California
Office of Administrative Law**

In re:

**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Amend sections: 3044, 3190, 3282, 3335

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**


**Government Code Section 11349.1 and
11349.6(d)**

OAL File No. 2014-0220-02 C

This regulatory action establishes a definition for Non-Disciplinary Segregation (NDS), describes the assignment of privilege group designations and specific privileges allowed to inmates designated NDS and incorporates by reference the NDS Personal Property Matrix.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: 3/24/2014



George C. Shaw
Senior Counsel

**For: DEBRA M. CORNEZ
Director**

**Original: Jeffrey Beard
Copy: Anthony Carter**

NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on reverse)

STD. 400 (REV. 01-2013)

CERT

For use by Secretary of State only

ENDORSED FILED
IN THE OFFICE OF

2014 MAR 24 PM 2:08


 DEBRA BOWEN
 SECRETARY OF STATE

2014 FEB 20 PM 3:34

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

13-0091

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional) (916) 324-6075
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Non-Disciplinary Segregation	AD. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2013-0913-04EON
--	---

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3044, 3190, 3282, 3335
	REPEAL
TITLE(S) 15	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §44 and Gov. Code §11347.1)

1/6/14 - 1/22/14

per agency request

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
---	---	---	--

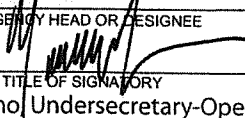
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Anthony Carter	TELEPHONE NUMBER (916) 445-2220	FAX NUMBER (Optional) (916) 323-6075	E-MAIL ADDRESS (Optional) Anthony.Carter@cdcr.ca.gov
----------------	------------------------------------	---	---

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2/14/14
TYPED NAME AND TITLE OF SIGNATORY Martin Hoshino, Undersecretary-Operations, CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 24 2014

Office of Administrative Law

Text of Adopted Regulations

In the following text, ~~strikethrough~~ indicates deleted text; underlining indicates added or amended text.

3044. Inmate Work Groups

Subsections 3044(a) through 3044(b)(6)(C) remain unchanged.

(b) Consistent with the provisions of section 3375 of these regulations, all assignments or reassignments of an inmate to a work group shall be by a classification committee action in accordance with this section.

(6) Work Group D-1: Lockup status. Inmates assigned to a segregated housing program, except for reasons specified within section 3043.4, shall be awarded one day credit for each day assigned to this work group. Segregated housing shall include, but not be limited to, the following:

Subsection 3044(b)(6)(D) is adopted to read:

(D) Non-Disciplinary Segregation (NDS)

Subsections 3044(b)(7) through 3044(c)(6) remain unchanged.

(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.

(6) Changes in privilege group status due to the inmate's placement in lockup:

Subsection 3044(c)(6)(A) is amended to read:

(A) An inmate housed in an ASU, SHU, or PSU shall be designated Privilege Group D- with the exception of inmate designated as NDS who shall retain their privilege group prior to ASU placement.

Subsections 3044(c)(7) through 3044(d)(2)(A) remain unchanged.

(d) Privilege Group A:

(2) Privileges for Privilege Group A are as follows:

Subsection 3044(d)(2)(B) is amended to read:

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist as defined in section 3045.2(e)(2). NDS inmates in Privilege Group A are restricted to non-contact visits consistent to those afforded other inmates in ASU.

Subsection 3044(d)(2)(C) remain unchanged.

Subsection 3044(d)(2)(D) is amended to read:

(D) Telephone access during the inmate's non-work/training hours limited only by institution/facility telephone capabilities. Inmates identified as NDS are permitted one personal telephone access per week under normal operating conditions.

Subsections 3044(d)(2)(E) through 3044(e)(2)(A) remain unchanged.

3044(e)(2) Privileges for Privilege Group B are as follows:

Subsection 3044 (e)(2)(B) is amended to read:

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist, as defined in section 3045. NDS inmates in Privilege Group B are restricted to non-contact visits consistent to those afforded other inmates in ASU.

Subsection 3044 (e)(2)(C) remains unchanged.

Subsection 3044(e)(2)(D) is amended to read:

(D) One personal telephone access period per month under normal operating conditions.

Subsections 3044(e)(2)(E) through 3044(g) remain unchanged.

(g) Privilege Group D:

Subsection 3044(g)(1) is amended to read:

(1) Criteria: Any inmate, with the exception of designated NDS inmates, housed in a special segregation unit, voluntarily or under the provisions of sections 3335-3345 of these regulations who is not assigned to either a full-time or half-time assignment.

Subsections 3044(g)(2) through 3044(h)(2)(F) remain unchanged.

Note: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and In re Monigold, 205 Cal.App.3d 1224 (1988).

3190. General Policy.

Subsections 3190(a) through 3190(b)(5)(C) remain unchanged.

New subsection 3190(c) is adopted to read:

(c) The Non Disciplinary Segregation (NDS) Personal Property Matrix (12/30/2013) identifies a separate list of allowable personal property afforded to inmates housed in ASU for non disciplinary reasons as affirmed by a classification committee, and is hereby incorporated by reference. The NDS Personal Property Matrix shall be updated by collaboration of all Division of Adult Institutions mission based programs no more frequently than twice yearly. All changes to the NDS Personal Property Matrix shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11350.3) and, if applicable, Penal Code 5058.3.

Existing subsections 3190(c) through 3190(t) are renumbered to new subsections 3190(d) through 3190(u) as follows and text remains unchanged:

~~(c)~~(d)

~~(d)~~(e)

~~(e)~~(f)

~~(f)~~(g)

~~(g)~~(h)

~~(h)~~(i)

~~(i)~~(j)

~~(j)~~(k)

~~(k)~~(l)

~~(l)~~(m)

~~(m)~~(n)

~~(n)~~(o)

~~(p)~~
~~(q)~~
~~(r)~~
~~(s)~~
~~(t)~~
~~(u)~~

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcala*, Marin County Superior Court, No. 117925, December 20, 1984 and *Armstrong v. Davis Court Ordered Remedial Plan*, Amended January 3, 2001; *In re Armstrong*, N.D. Cal, No. C 94-02307, March 20, 1998.

3282. Use of Telephones by Inmates

Subsections 3282(a) through 3282(a)(5) remain unchanged.

Subsection 3282(b) is amended to read:

(b) Facilities shall provide inmate telephones for use by ~~general population~~ inmates consistent with their assigned privilege group. Inmates may place collect telephone calls to persons outside the facility at designated times and on designated telephones, as set forth in local procedures. Limitations may be placed on the frequency and length of such calls based on the inmate's privilege group as outlined in section 3044, and to ensure equal access. Telephone calls requiring the use of a Telecommunication Device for the Deaf (TDD) or voice relay service shall have extended time scheduled due to the time delay which results from the TDD relay process.

Subsections 3282(c) through 3282(i) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3335. Administrative Segregation.

Subsection 3335(a) remains unchanged.

New subsections 3335(b) through 3335(b)(3) are adopted to read:

(b) Non Disciplinary Segregation. Non Disciplinary Segregation (NDS) means segregated housing placement for administrative reasons to include but are not limited to:

(1) ASU placement for safety concerns not resulting from misconduct warranting a Rules Violation Report.

(2) Investigations not related to misconduct or criminal activity.

(3) Being a relative or an associate of a prison staff member.

Existing subsections 3335(b) through 3335(i) are renumbered to new subsections 3335(c) through 3335(j) as follows and text remains unchanged.

~~(b)~~ (c)

~~(c)~~ (d)

~~(d)~~ (e)

~~(e)~~ (f)

~~(f)~~ (g)

~~(g)~~ (h)

~~(h)~~ (i)

~~(i)~~ (j)

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; Wright v. Enomoto, (1976) 462 F Supp 397; and Toussaint v. McCarthy (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069.